



May 14, 2020

The European Commission
Directorate-General for Internal Market,
Industry, Entrepreneurship and SMEs
Brussels, Belgium

Sent via U.S. TBT Enquiry Point

Re: Comments from the Toy Association and the U.S. Toy Industry Regarding Proposed Revisions of Directive 2009/48/EC Revising Restrictions on Allergenic Substances (TBT Notifications EU/705 and EU/706)

Dear Sir/Madam:

I am writing to you on behalf of the Toy Association, a not-for-profit trade association in the United States, to provide comments on proposed revisions of the Toy Safety Directive or “TSD” (2009/48/EC), revising restrictions on allergenic substances (TBT Notifications EU/705 and EU/706). We appreciate the opportunity to comment on these proposals.

The Toy Association represents the North American toy industry -- including more than 1,000 toy designers, inventors, manufacturers, importers, retailers, and testing laboratories. The Toy Association and the North American toy industry recognize and support The European Commission’s commitment to protecting human health and safety in toys. In fact, The Toy Association and our members have been global leaders in toy safety for decades. The Toy Association continues to work with medical experts, governments, consumers, and industry to provide technical input to ensure that toy safety standards keep pace with innovation and potential emerging issues.

We also recognize and share the EC’s commitment to ensure that toys are safe for our youngest consumers; however, we believe that the subject proposals are “a bridge too far” in that they potentially impose a significant cost burden on manufacturers without concomitant safety benefit. These proposals would, in the aggregate, add three substances to the current list of 55 prohibited fragrances, and add 61 fragrances to the current list of 11 (to be reduced to 10 per EU/705) requiring labeling.

There are already significant regulatory cost burdens placed upon manufacturers and importers into the EU, and these are unfortunately enforced disproportionately against imported items (we state this based on Safety Gate/RAPEX notifications), creating a technical trade barrier. Leaving aside the propriety of applying cosmetic requirements to toys, most of which do not have the prolonged dermal contact or inhalation exposure that cosmetics do, the cost burden is potentially significant. While creators of scented products can easily avoid intentionally adding any of the restricted fragrances to their products, manufacturers of other items will need to declare conformity to the essential elements of the TSD, including the note in the second paragraph of Note 11 of Part III of Annex II of the TSD, assuring that any presence of these substances, all 129 of them, is technically unavoidable under good manufacturing practice and does not exceed 100 mg/kg. We are concerned that manufacturers and importers, even of unscented products, will come under pressure from retailers, test laboratories, and market surveillance authorities to confirm this by test.

We suggest an alternative: to apply these requirements only to toys which are intentionally fragranced. This approach would achieve the safety objectives of the EC proposal, while avoiding the cost burden and most of the trade barrier effects. As an industry committed to product safety – particularly the safety of toys for children -- we believe that, as these substances are highly unlikely to be in products not containing intentionally-added fragrances, this alternative would be fully protective of children's health and in keeping with the spirit of the Toy Safety Directive, as well as being more workable for industry.

We also urge that the effective date of any restrictions be aligned with that for cosmetics. As toy producers are minor users of fragrances, this would make it more likely that requisite information on fragrance constituents would be available from fragrance suppliers.

We urge the EC to consider our counterproposal, as this would represent a more targeted and appropriate regulatory approach to this issue, as well as minimizing unnecessary burdens and costs on toy companies.

We appreciate the opportunity to provide these comments and the Commission's willingness to consider stakeholder input. Please do not hesitate to contact me if you should have questions or would like further information from me. I can be reached at akaufman@toyassociation.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alan P. Kaufman', with a long horizontal flourish extending to the right.

Alan P. Kaufman
Senior Vice President, Technical Affairs